IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1895 OF 2005

WITH

CIVIL APPLICATION NO.4508 OF 2005

Mrs.Fermina Paul Lewis ..Appellant.

Vs.

The Municipal Corporation for
Greater Bombay ..Respondent.

....

Mr.M.S.Menon for the Appellant.

Mr.J.J.Xavier for the BMC.

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CORAM : DR.D.Y.CHANDRACHUD, J.

8th December, 2005.

P.C. :

Admit. Perused the pleadings and evidence with the assistance of counsel. By consent taken up for final hearing.

This First Appeal arises out of the judgment of the City Civil Court dismissing a suit instituted by the Appellant in order to challenge a notice under Section 351 of the Mumbai Municipal

Corporation Act, 1888. The notice was issued on 23rd May, 2002 and after furnishing an opportunity to the Appellant, the Assistant Municipal Commissioner by an order dated 17th August, 2002 came to the conclusion that the extension carried out by the Appellant in the premises of the structure was unauthorized. The notice given by the Municipal Corporation was in respect of the unauthorized extension to the existing structure with brick masonry walls and A.C. Sheet roof admeasuring 9’-6" x 9’-3" and of the height of 6’-6". The case of the Appellant was that the structure was in existence prior to 1950. The Learned Trial Judge was, in my view, justified in holding that none of the documents which were produced by the Appellant showed the existence of the structure prior to the datum line of 1st April, 1962. But above all, what is sufficient to sustain the dismissal of the suit is the admission of the Plaintiff - Appellant who during the course of the cross examination admitted thus :

"I have not taken permission from Corporation for extension. ...I have not submitted approved plan to BMC."

The admission of the Appellant that the permission of the Municipal Corporation has not been taken for carrying out the extension was sufficient in itself to justify the dismissal of the suit. In the circumstances, having considered the First Appeal, I am of the view that there is no infirmity in the impugned order of the Learned Trial Judge. The Appeal is dismissed.

In view of the disposal of the First Appeal, the Civil Application is rendered infructuous and is accordingly disposed of.